IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2007

C O R A M

THE HONOURABLE Mr.JUSTICE P.JYOTHIMANI

W.P.No.19530 of 2007

R.Sreedher .. Petitioner

-Vs.-

1. The Registering Officer (District Registrar),
   Office of the Sub Registrar,
   Virugambakkam, Chennai - 83.

2. The Inspector General of Registration,
   Santhome, Chennai - 1. .. Respondents

PRAYER: Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the respondents to complete the registration formalities of the original sale deed dated 29.12.2006 registration receipt No.P200600083 dated 29.12.2006 and return the same.

For Petitioner : Mr.K.Kannan,
for Mr.Sunil Kumar.

For Respondents : Mr.N.Senthil Kumar,
Government Advocate (Writs)

O R D E R

This writ petition is filed for a direction against the respondents to complete the registration formalities of the original sale deed executed on 29.12.2006 with registration receipt No.P200600083 dated 29.12.2006.

2. The property of an extent of 21.05 acre of land at Maduraivoil Village comprised in old Survey Nos.432/1, 452/1, 453/1 & 2, 454, 455 and 456/1, now comprised in new Survey Nos. 432/1, 452/1A, 453/1, 453/2, 454/1, 455 and 456/1A in Chengelpet District originally belonged to M/s. Alstom Limited now known as M/s. Areva T & D India Limited. One Kanchi Kamakoti Janakalyan Trust appears to have shown interest in purchasing the property for promotion of its own charitable objects and entered into an agreement of sale on 23.10.2002 for a consideration of Rs.9,65,00,000/-. Since the trust could not proceed with the purchase of the property, by letter dated 31.03.2002, the petitioner was assigned the right under the agreement authorising him to take further steps for securing the sale of the property. Out of the total extent of the property, an extent of 32 cents comprised in Survey No.453/2 was stated as a pond porampoke and therefore steps have to be taken for the purpose of

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obtaining patta in respect of that property and there are some encroachments in the said property.

3. The vendor M/s. Alstom Limited due to their own compulsion for immediate registration of the document and therefore the petitioner has obtained a sale deed in respect of the said total extent of the property on 29.12.2006. The original sale consideration agreed namely Rs.77,20,000/- corresponding to the market value as stated in the sale deed was also paid by the petitioner to the vendor by way of a Demand Draft. The sale deed itself was entered in pursuance to the original deed of agreement dated 23.10.2002 with Janakalyan Trust as stated above. The petitioner paid the registration fee of Rs.9,65,000/- and all other miscellaneous charges which are required for registration. The documents were presented to the first respondent for registration on 29.12.2006. However, the first respondent has not registered the document and returned the same to the petitioner till date. According to the petitioner, the first respondent has no right to retain the document except if it is a case under Section 47(A) of the Indian Stamp Act in respect of under valuation of the property. As far as the present sale deed is concerned, it is not in dispute that the valuation of the property has been correctly given and the same is properly valued and therefore the conduct of the first respondent in not completing the registration and returning the documents amount to gross illegality affecting the right of the citizen under Article 14 of the Constitution of India. It is in view of the same, the petitioner has come forward with the present writ petition for the relief as stated above.

4. The respondents have filed a counter affidavit. The case of the respondents in the counter affidavit is that it is true that in respect of the said extent of the property stated above, the sale deed was executed by the vendor in favour of the petitioner on 29.12.2006 and the document was presented for registration before the first respondent on payment of required charges in accordance with law. It is also admitted that the stamp duty of Rs.77,20,000/- was paid apart from the registration fee of Rs.9,65,000/- which was also collected from the petitioner. However, it is the case of the respondents as seen in the counter affidavit that the petitioner gave a representation along with the sale deed when it was presented for registration that the petitioner had to obtain patta for an extent of 0.32 acres of land comprised in S.No.453/2 which is appearing in the 'A' Register as 'Pond' and therefore the petitioner requested the first respondent not to complete the registration till the patta in respect of the said property is obtained vide his letter dated 29.12.2006. It is the further case of the respondents that in view of the fact that the petitioner has no right to sell or transfer the property which has been maintained as 'Pond' and patta having been not issued, no illegality has been committed by the first respondent in retaining the document.

5. Mr.K.Kannan, learned counsel appearing for the petitioner would submit that when the facts are not in dispute, there is no right on the part of the first respondent to retain the documents. According to the learned counsel even assuming that the petitioner has given such a request, that request itself will not enable the first respondent to retain the document when the petitioner seeks to complete the process of registration. As far as the contention in the counter affidavit filed by

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the respondent that a portion of the property of an extent of 0.32 acres comprised in Survey No.453/2 is stated as pond in the 'A' Register maintained by the Government, even then it is not the right on the part of the first respondent to retain the document on that ground alone. As far as the issuance of patta is concerned, it is for the local or revenue authority to decide about that and it is not open to the first respondent to decided about the legality or otherwise of title in respect of the property.

6. The learned counsel for the petitioner would also submit that under the Registration Act, Section 22-A which as stood earlier dealt with registration of documents which are opposed to public policy and there were three circumstances under which the registering authority were empowered to refuse registration of the documents namely,

(a) cases were properties belonged to the Government or the local bodies such as the Chennai Metropolitan Development Authority or Corporations, or Municipalities, or Town Panchayats, or Panchayat Unions or Village Panchayats; or

(b) where sale of the property relates to un-approved lay out; or

(c) where the properties belong to any religious institutions.

The validity of the said Section was considered by the Division Bench of this Court reported in 2007 (3) CTC 513 (Captain Dr.R.Bellie and another Vs. The Sub-Registrar, Registration Office, Sulur, Coimbatore District and others). The Division Bench has struck down Section 22-A of the Registration Act as unconstitutional and ultra vires of Article 14 of the Constitution of India. The Government has issued a Notification in G.O.Ms.No.150, Commercial Taxes, dated 22.09.2000 in exercise of the powers conferred under Section 22-A (1) of the Act and that was also came to be challenged before this Court and a learned Single Judge of this Court has held in W.P.No.7237 of 2006 that once the said Section 22-A has been struck down, any Notification issued under that Section is illegal and not valid.

7. Thus Mr.K.Kannan, learned counsel would submit that in pursuance to the judgment of the learned single judge of this Court as stated above, the Government by its Notification in G.O.Ms.No.139, Commercial Taxes and Registration (J1) Department dated 25.07.2007 has withdrawn the said notification itself. Further according to the learned counsel, as on date no such power which was original given to the registering authorities is available and therefore there is absolutely no justification on the part of the respondents to retain the document. Mr.K.Kannan, learned counsel also referred to the Tamil Nadu Registration Rules especially with reference to Rule 162 which contemplates circumstances wherein the registering authority can refuse to register the documents and according to the learned counsel, in the case on hand, the first respondent has no jurisdiction to retain or refuse to register the document. In view of the same, he would contend that there is absolutely no authority on the part of the first respondent to retain the document especially when there is no material to impeach the valuation and in view of the fact that the petitioner has paid the stamp duty and other registration charges as required under law.

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8. On the other hand Mr.N.Senthil Kumar, learned Government Advocate appearing for the respondents would submit that the first respondent had to keep the document in abeyance only due to the reason that the petitioner has given a representation dated 29.12.2006. In fact the learned Government Advocate produced the letter of the petitioner dated 29.12.2006, in which the petitioner has clearly stated that he has taken steps for the purpose of obtaining patta in respect of the said disputed property and immediately after the patta is obtained he can proceed for registration. According to the learned Government Advocate, since a part of the land sought to be registered is a public property and that public property is the subject matter of sale, it cannot be stated as if the registering authority has no right to raise questions. In this regard, the learned Government Advocate relied upon the Judgement of the First Bench of this Court rendered in W.P.No.22274 of 2007 wherein the First Bench has held that in respect of water body / water source poromboke lands revenue authorities cannot issue any patta. Therefore, according to the learned Government Advocate, when the petitioner has given a letter stating that after obtaining patta from the revenue authorities, he will approach the registering authorities for the purpose of completing the sale, since no patta can be issued as per the Judgment of this Court, there is no illegality on the part of the first respondent in not registering the document.

9. Heard Mr.K.Kannan, learned counsel appearing for the petitioner and Mr.N.Senthil Kumar, learned Government Advocate appearing for the respondents and perused the entire materials available on record.

10. On the face of the sale deeds it can been seen that the petitioner's vendor have originally purchased the property under a sale deed dated 31.07.1963. In the sale deed of the previous vendor there is a clause in respect of the said disputed 32 cents of land which is stated to be in possession of the previous vendor from the said year onwards and even in the subsequent documents in 1965, there is reference to the disputed land and therefore on the face of it, it is clear that as per the sale deed dated 31.07.1963, i.e. from 1963 onwards the disputed portion viz., 32 cents has been in possession of the previous vendors and the question as to whether patta to such property can be issued or not, the matter cannot be decided by the registering authority. It is for the revenue authority to decide about the grant of patta in respect of the properties which are encroachments on the water body / water source poramboke lands. Therefore the contention of the learned Government Advocate that no patta was obtained to this portion of the property and therefore there is justification on the part of the first respondent in keeping the document in abeyance, has no meaning.

11. On the other hand, as rightly pointed out by the learned counsel for the petitioner, under the Registration Act as per Section 22-A of the Act, as enumerated above, only under the said three circumstances there was justification on the part of the registering authorities in retaining the documents and that has also now been taken away as per the decision of the Division Bench of this Court reported in 2007 (3) CTC 513 (Captain Dr.R.Bellie and another Vs. The Sub-Registrar, Registration Office, Sulur, Coimbatore District and others). The Division Bench of this Court

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following the Judgment of the Hon'ble Apex Court in State of Rajasthan & Ors V. Basant Nahata (2005 (4) CTC 606) has struck down Section 22-A of the Registration Act, 1908 as unconstitutional and ultra vires of Article 14 of the Constitution of India. The said decision was held on the basis of the concept of public policy in respect of the properties sought to be registered. The Division Bench has also had the occasion to decided about the validity of G.O.Ms.No.150, Commercial Taxes, dated 22.09.2000 which was passed by the state Government based on the amended provision of Section 22-A by way of Registration (Tamil Nadu Amendment) Act, 1994 and it was held that the said Government Order and also the subsequent amendment as unconstitutional and ultra vires of Article 14 of the Constitution of India. The Division Bench has held while dealing with the concept of Public Policy in para 5 as follows:

> "5. Admittedly, no statutory rule or any other provision has been made by the Legislature of the State of Tamil Nadu defining "public policy" or "as opposed to public policy". It is the Executive of the State Government vide G.O.Ms.No.150, Commercial Taxes, dated 22.09.2000 laid down guideline relating to documents/class of documents "as opposed to public policy", which reads as follows:
>
> "In exercise of the powers conferred by sub section (1) of Section 22A of the Registration Act, 1908 (Central Act, XVI of 1908), the Governor of Tamil Nadu hereby declares the following documents as opposed to public policy, namely:
>
> 1. Any instrument relating to--
>
> (i) conveyance of properties belonging to the Government or the local bodies such as the Chennai Metropolitan Development Authority or Corporations, or Municipalities, or Town Panchayats, or Panchayat Unions or Village Panchayats; or
>
> (ii) conveyance of properties belonging to any religious institutions including temples, mutts, or specific endowments managed by the Hereditary Trustees/non-hereditary trustees appointed to any religious institution under a Scheme settled or deemed to have been settled under the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959) and mutts and temples including specific endowments attached to such of those temples managed by mutts; or
>
> (iii) conveyance of properties assigned to or held by--
>
> (a) The Tamil Nadu State Boodan Yagna Board established under Section 3 of the Tamil Nadu Bhoodan Yagna Act, 1958 (Tamil Nadu Act XV of 1958) or
>
> (b) The Tamil Nadu Wakf Board
>
> unless a sealed No Objection Certificate issued by the competent authority as provided under the relevant Act or the rules framed thereunder for this purpose and in the absence of any such provisions in any relevant Act or in the rules framed thereunder authority so authorised by the Government, to the effect that such registration is not in contravention of the provisions of the respective Act, is produced before the Registering Officer;

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2. Conveyance of lands, converted as house sites without the approved layouts unless a No Objection Certificate issued by the authority concerned of such local bodies, namely Corporations, or Municipalities or Town Panchayats, Panchayat Unions, or village Panchayats or Chennai Metropolitan Development Authority is produced before the Registering Officer;

3. Cancellation of sale deeds without the express consent of the parties to the documents."

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7.....
8.....

ultimately, the Division Bench has held in Para 9 as follows:

"9. It has already been pointed out that the Legislatures' of the State has not laid down defining 'public policy' or documents which are 'as opposed to public policy'. The provision was made vide G.O.Ms.No.150, Commercial Taxes, dated 22.09.00, as quoted above, has also been set aside by this Court vide judgment dated 20.03.2006 in W.P.No.7237/06. In view of the aforesaid fact, following the ratio laid down by the Supreme Court in the case of Basant Nahata (supra), we also declare the amended provision of Section 22-A as made vide Registration (Tamil Nadu Amendment) Act, 1994, unconstitutional and ultra vires Articles 14 and 246 of the Constitution of India."

Therefore, as per the the legal position which stands as on date, there is no power on the part of the registering authorities either to retain the document or deferring the documents from registration for any reason.

12. There is one other provision under the Registration Rules for refusal of registration viz., Rule 162 which reads as follows:

"Rule 162: When registration is refused the reasons for refusal shall be at once recorded in Book 2. They will usually come under one or more of the heads mentioned below--

I. Section 19:- That the document is written in a language which the registering officer does not understand and which is not commonly used in the district, and that it is unaccompanied by a true translation and a true copy.

II. Section 20:- That it contains unattested interlineations, blanks, erasures or alterations which in the opinion of the registering officer require to be attested.

III. Section 21:- (1) to (3) and Section 22:- That the description of the property is insufficient to identify it or does not contain the information required by rule 18.

IV. Section 21 (4):- That the document is unaccompanied by a copy or copies of any may or plan which it contains.

V. Rule 32:- That the date of execution is not stated in the document or that the correct date is not ascertainable.

VI. Sections 23,24,25,26,72,75 and 77:- That it is presented after the prescribed time.

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VII. Sections 32,33,40 and 43:- That it is presented by a person who has no right to present it.

VIII. Section 34:- That the executing parties or their representatives, assigns or agents have failed to appear within the prescribed time.

IX. Sections 34 and 43:- That the registering officer is not satisfied as to the identity of a person appearing before him who alleges that he has executed the document.

X. Sections 34 and 40:- That the registering officer is not satisfied as to the right of a person appearing as a representative, assign, or agent so to appear.

XI. Section 35:- That execution is denied by any person purporting to be an executing party or by his agent.

XII. Section 35:- That the person purporting to have executed the document is a minor, or idiot or a lunatic.

XIII. Section 35:- That execution is denied by the representation or assign of a deceased person by whom the document purports to have been executed.

XIV. Section 35 and 41:- That the alleged death of a person by whom the document purports to have been executed has not been proved.

XV. Section 41:- That the registering officer is not satisfied as to the fact of execution in the case of a will or of an authority to adopt presented after the death of the testator or donor.

XVI. Section 25, 34 and 80:- That prescribed fee or fine has not been paid.

XVII. Section 230 (A) of the Income Tax Act, 1961 (Act 43 of 1961):- That the prescribed certificate from the Income Tax Officer has not been produced.

XVIII. Section 10 of the Tamil Nadu Land Reforms (Fixation of Ceiling of Land) Act, 1961 (Act 58 of 1961):- That the declaration has not been filed by the transfer.

XIX. Section 27 of the Tamil Nadu Urban Land (Ceiling and Registration)Act, 1978 (Act 24 of 1978):- That the statement has not been filed by the transferror and transferee."

A reference to the said rules shows that the issue involved in this case does not apply to any one of the instances mentioned therein. Therefore the first respondent cannot seek protection under any of the provisions of the Registration Act as well as the Rules framed therein.

13. Therefore, in my considered view, the contention of the learned counsel appearing for the petitioner that the first respondent has no authority to retain the document is well founded. The contentions raised by the learned Government Advocate that in respect of public property, poramboke lands as well as water bodies, the local authority has no power to issue any patta as per the Full Bench decision of this Court rendered in W.P.No.22274 of 2007 is not in dispute. The learned Government Advocate referred to the G.O.Ms.No.854, Revenue Department, dated 30.12.2006, wherein the Government has issued direction in respect of issue of patta to those persons occupying Government poramboke land, holding that the guidelines issued by the Government under the said

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Government Order will not enable the revenue authorities to issue patta in respect of encroachers who have encroached water bodies / water source poromboke lands and therefore it is clear that if the said extent of land in the sale deed remains to be a 'pond' then the revenue authorities can reject the claim of any one to issue patta. Therefore it is made clear that merely because the first respondent has registered and released the documents it does not prevent the revenue authorities from considering the request for issuance of patta in accordance with law as stated above. It is always open to the local authority to reject such claim if the said portion is a water body.

14. In view of the above said facts, the writ petition stands allowed and the first respondent is directed to complete the process of registration in respect of the sale deed dated 29.12.2006, if all the other requirements relating to the registration are satisfied and release the same within two weeks from the date of receipt of a copy of this order. It is needless to state that in the event of the local authority taking any action in respect of the issue involved in the present petition regarding the said portion of the land, it is always open to the authorities to proceed as per law and in that event it is also open to the petitioner to raise all his defence in accordance with law including his claim that the portion of the property is in his possession from the year 1963 onwards. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

kk

To

1. The Registering Officer (District Registrar),
   Office of the Sub Registrar,
   Virugambakkam, Chennai - 83.

2. The Inspector General of Registration,
   Santhome, Chennai - 1.

1 cc To Mr.K.Kannan, Advocate, SR.67495.
1 cc To The Government Pleader, SR.67398.

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